MALAYAN UNION REPORTS.

IN RE THE ESTATE OF A.R.S.V. VINAITHEERATHAN CHETTIAR.

[Orig. Civil Juris. (Willan, C.J.) May 5, 1947]

Probate and Administration Enactment, F.M.S., Sections 59 and 72 — Application for Letters of Administration — Form of Petition — Service of Petition — Rules for Non-Contentious Business, Rules 33 and 48.

The deceased in this case died intestate on the 10th April 1946 in South India, leaving him surviving a widow, four sons and two daughters, all the children being minors and residing in South India. One S. A. Andiappa Chettiar (hereinafter referred to as the Petitioner) applied for Letters of Administration to be granted to him on the following grounds (a) that he is a brother of the widow of the deceased and therefore a maternal uncle of the deceased's minor children (b) that he is the attorney of P.R.A.S. Andiappa Chettiar, the father-in-law of the deceased in whose care the deceased's minor children have been since the death of the deceased. In his petition for letters of administration the petitioner stated that the only next-of-kin of the deceased were the widow and six minor children, all resident in India. The petitioner was not one of the next-of-kin of the deceased, and the order granting letters of administration to him was made under Section 54 (1) of the F.M.S. Probate and Administration Enactment. Within fifteen days of the order having been made, one A.R.S. Ramanathan Chettiar, applied by motion to set aside the order. In his supporting affidavit he stated that he is the eldest brother of the deceased and that he came to Malaya from India on the 27th November 1946, that is, twelve days after the order was made granting letters of administration to the petitioner. The affidavit also disclosed that at the time of the petitioner's application the petitioner knew that another brother of the deceased, one Letchumanan Chettiar, was living in Kuala Lumpur.

Held, that in this case Letchumanan Chettiar being a brother and next-of-kin of the deceased and being of full age and resident within the jurisdiction should have been named by the petitioner in his application and should have been served with the notice of it.

Case referred to:—

(1) *Elmsley v. Yoong* (1835) 2 My. & K. 780.

ADMINISTRATION PETITION.

Torswill for Petitioner.

Ramani for Objector.

Willan, C. J. : — The facts in this matter are that the deceased died intestate on the 10th day of April, 1946, in the State of Pudukkottai, South India. He left surviving him a widow, four sons and two daughters, all the children being minors and residing in South India. The widow survived the deceased by only eight days, having died on the 18th day of April, 1946.

Since part of the estate of the deceased consists of a one-fourth share in a money-lending business carried on at No. 92 Ampang Street, Kuala Lumpur, it became necessary for some one to apply for a grant of letters of administration to the deceased's estate in the Malayan Union. To that end, one S. A. Andiappa Chettiar (hereinafter in this judgment referred to as "the petitioner") applied for letters of administration to the deceased's estate to be granted to him on the following grounds :—

(a) That he is a brother of the widow of the deceased and therefore a maternal uncle of the deceased's minor children.

(b) That he is the attorney of P. R. A. S. Andiappa Chettiar, the father-in-law of the deceased, in whose care the deceased's minor children have been since the death of the deceased. That the said P. R. A. S. Andiappa Chettiar had applied to the Chief Court at Pudukkottai as guardian and next friend of these minor children for the issue to him of a succession certificate to enable him to collect certain moneys payable in India to the deceased's estate.

In his petition for letters of administration the petitioner stated that the only next-of-kin of the deceased were the widow and the six minor children, all resident in India. The petitioner is not one of the next-of-kin of the deceased, and the order granting letters of adminstration to him was made under sub-section (i) of section 54 of the Federated Malay States Probate and Administration Enactment (Cap. 8). That sub-section is as follows :—

> When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of death of such person, resident out of the Federated Malay States, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Court may in its discretion, having regard to consanguinity, amount of interest, the safety of the estate, and the probability that it will be properly administered, appoint such person as it thinks fit to be administrator.

Within fifteen days of that order having been made one Ana Roona Soona Ramanathan Chettiar, hereinafter in this judgment referred to as "the objector", applied by motion to set aside the aforesaid order. In his supporting affidavit the objector states that he is the eldest brother of the deceased and that he came to Malaya from India on the 27th November, 1946, i.e. twelve days after the order was made granting letters of administration to the petitioner.

His affidavit also discloses that at the time of the petitioner's application another brother of the deceased, Letchumanan Chettiar, was living in Kuala Lumpur and managing the firm in which the deceased

had one-fourth interest. This affidavit further discloses that correspondence had taken place between the solicitors for the petitioner and the solicitors for Letchumanan Chettiar, which makes it abundantly clear that when he filed his petition the petitioner knew that Letchumanan Chettiar was residing in Kuala Lumpur.

An application for letters of adminstration must be made by petition and, up to the year 1936, the contents of that petition were governed by section 72 of the Probate and Administration Enactment (Cap. 8). Paragraph (b) of that section lays down that in the petition there shall be stated :—

> The family or other relatives of the deceased, and their respective residences.

By Gazette Notification No. 1101 of 1936 the form of petition for letters of administration is prescribed, and the following new Rule was added to the Rules for Non-contentious Business in the Supreme Court in its probate jurisdiction :—

> 4A. Petitions for probate and for letters of administration and for the resealing of probate or letters of administration shall be verified by affidavit in the form provided in the schedule and the Probate and Administration Enactment shall cease to apply to the Supreme Court in matters to which this rule applies in so far as the said Enactment makes provisions contrary to this rule.

That Rule was made by the Rule Committee under the powers conferred upon it by the Rule Committee (Supreme Court) Enactment (Cap. 13). Sub-sections (i) and (ii) of section 5 of that Enactment are as follows :—

> (i) The Rule Committee in making any Rules under this Enactment may declare that the provisions of any written law shall cease to apply to the Supreme Court in so far as such provisions relate to matters in respect of which such Rules are lawfully made.
>
> (ii) In the event of inconsistency or conflict between any written law and a Rule lawfully made under this Enactment the provisions of the Rule shall prevail.

Hence, after the enacting of the said Rule 4A in 1936, petitions for letters of administration have to be made in the form provided in Gazette Notification No. 1101 of 1936, already mentioned, and the contents of such petition are no longer governed by section 72 of the Probate and Administration Enactment (Cap. 8). Paragraph 2 of that form is as follows :—

> 2. That the said.....died leaving him/her surviving the under-mentioned persons — namely,

	Name.	Full address.	Degree of relationship.	Age.
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				
(7)				
(8)				
(9)				
(10)				

> The above-mentioned persons were at the time of his/her death the only next-of-kin of the said .....deceased.

Thus, after the promulgation of Gazette Notification No. 1101 of 1936, a petitioner for letters of administration is no longer required to state the relatives of the deceased in his petition, in accordance with the provisions of section 72 of the Probate and Administration Enactment, but, instead, must state therein the next-of-kin of the deceased. When administration is applied for by one or some of the next-of-kin, Rule 33 of the Rules for non-contentious business of the Supreme Court in its probate jurisdiction, which appears on page 32 of Vol. 1 of the Rules of the Federated Malay States, prescribes the next-of-kin to whom notice of the application must be given. That Rule reads :—

> Where administration is applied for by one or some of the next-of-kin only, there being another or other next-of-kin equally entitled thereto, the Registrar or District Registrar may require proof by affidavit that notice of such application has been given to such other next-of-kin. In every case a notice of the application having been made and of the date when it will be heard must be posted on the Notice Board of the Registry.

In this case the objector seeks to set aside the order granting letters of administration to the petitioner on the ground that although Letchumanan Chettiar, a brother and one of the next-of-kin of the deceased, was within the jurisdiction, the petitioner failed to include him as one of the next-of-kin in paragraph 2 of the petition and also failed to have him served with notice of the application under Rule 33.

The main contentions of the petitioner are :—

(1) That Letchumanan Chettiar is not a next-of-kin of the deceased but a relative, and therefore there was no need either to include him in the petition or to serve him with notice of it.

(2) That the objector is not entitled to any share in the estate of the deceased and consequently he has no right to ask for the order granting letters of administration to the petitioner to be set aside.

As to (1) there is no definition of the expression "next-of-kin" in the Probate and Adminstration Enactment (Cap. 8) nor in the Rules for non-contentious business of the Supreme Court in its probate jurisdiction. That expression is defined in the Distribution Enactment (Cap. 71), but only for the purposes of that Enactment. The primary meaning of that expression is "the nearest blood relations of the testator at the time of his death" — see *Elmsley v. Yoong*[1].

I find therefore that Letchumanan Chettiar is one of the next-of-kin of the deceased and was, to the knowledge of the petitioner, within the jurisdiction at the time of the petitioner's application.

As to (2), if Letchumanan Chettiar should have been included in the petitioner's application, then he, Letchumanan Chettiar, could have applied to set aside the order. I fail to see why the objector, who, like Letchumanan Chettiar, is a brother (the eldest brother) and one of the next-of-kin of the deceased, should not have the same right.

As already stated, the objector's case rests on the following grounds :—

(a) That Letchumanan Chettiar, as one of the next-of-kin of the deceased, was not named in the petition.

(b) That he was not served with notice of the petitioner's application under Rule 33.

As to (a), I have already decided that Letchumanan Chettiar is one of the next-of-kin of the deceased.

With regard to (b), Rule 33 only applies when administration is applied for by one or more of the next-of-kin, and in this case the petitioner, as a brother-in-law of the deceased, is not one of the next-of-kin. I can find no Rule dealing with who should be served with notice of the application in a case such as this, and this is a matter which is dealt with later in this judgment.

In addition, the objector relied on Rule 48 of the Rules for Non-contentious Business of the Supreme Court in its probate jurisdiction. That Rule is as follows :—

> Notices of application are to set forth the manner and interests of all persons who, according to the practice of the Court, would have a prior right to the applicant, and to show how such prior right is cleared off. In case the persons or any of them have renounced, the date of his or her renunciation must be stated. If the applicant claims as the representative of another person, the date and particulars of the grant to him must appear.

If that Rule is read in conjunction with Rule 47 — both Rules appear in the same part of the Rules headed "Notices of Applications" — and also with the Notice of Application for Letters of Administration itself, which appears in Form No. 4 of the Schedule of Forms to the Rules, it is clear that the Notice of Application referred to in Rule 48 only applies to notices which have to be transmitted to the Registrar of the Central Registry at Kuala Lumpur, when applications are filed in Registries other than the Central Registry. The application in this case was filed by the petitioner in the Kuala Lumpur Registry of the Supreme Court of the Malayan Union, which has taken the place of the Central Registry of the Supreme Court of the Federated Malay States. Accordingly Rule 48 has no application to this case.

The objector's case, therefore, stands or falls on whether, Letchumanan Chettiar being one of the next-of-kin of the deceased, he should have been named in the petitioner's application for letters of administration, and served with notice of that application.

Since a petition for letters of administration only provides for next-of-kin being named therein, this raises :—

First, the question material in this case, — when a deceased intestate leaves surviving him a number of next-of-kin, who of such next-of-kin must be named by the petitioner in his application for letters of administration?

Secondly, the question not material in this case but which I propose to decide, — when a wife dies intestate leaving surviving her a widower and next-of-kin, and an application is made by one of the next-of-kin for letters of administration, must the widower, who is not one of the next-of-kin, be named in the petitioner's application? Similarly when a husband dies intestate leaving surviving him a widow and next-of-kin.

From a perusal of the provisions of the Probate and Administration Enactment (Cap. 8) it is clear that, apart from the rights of a creditor to apply for letters of administration, there are two classes of persons to whom letters of administration can be granted :—

(1) Those who, under ordinary circumstances, are *entitled* to administration. These are the persons who are entitled to the whole or any part of the estate of an intestate deceased — see section 24 of this Enactment.

(2) Those who do not come within the purview of section 24 but who, primarily for the safety of the estate, *may* be granted letters of administration — see section 54 of the Enactment.

The persons most interested in the granting of letters of administration to the estate of a deceased are those who are entitled to a share in that estate, and each of these persons is entitled to be granted letters of administration under section 24 of the Enactment. Such persons will normally be the children of the deceased, who are next-of-kin of the deceased, and the widow or widower, neither of whom is a next-of-kin.

When the application for letters of administration is made by one of the children, as a next-of-kin, the applicant must name in the petition all the other children, because they are next-of-kin. Therefore when the widower or widow is entitled to a share in the estate, he or she, as the case may be, is in the same class as any one of the children by virtue of section 24 of the Enactment, and commonsense dictates that he or she should not have lesser rights than any of the children. Accordingly, in such a case, I hold that the widower or widow, as the case may be, must be named in the petition. Equally I hold, on the analogy of Rule 33, that such widower or widow, as the case may be, must be served with notice of the application.

Stated generally, I decide that when an application for letters of administration is made by an applicant who is entitled to a share in the estate of an intestate deceased, such applicant must disclose in his application all the other persons who are entitled to shares in the estate of the deceased but need not go beyond such persons. Equally, all such persons who are of full age and resident in this jurisdiction must be served with notice of the application. This is the present practice of the Court, but, so far as I am aware, it has never been judicially decided.

When, as in this case, an application for letters of administration is made by a person who is not entitled to a share in the deceased's estate, it is clear that such person must name in his application all the persons who are entitled to a share in the estate. because each of them is *entitled* to administration under section 24 of the Enactment and thus has a prior right to an applicant who is not entitled to administration but *may* only be granted administration under section 54 of the Enactment in certain circumstances. All such persons who are of full age and resident within the jurisdiction must be served with notice of the application.

In addition to naming in his petition the persons entitled to a share in the deceased's estate :—

(a) If the applicant is a next-of-kin himself, he should also name any other next-of-kin of full age and within the jurisdiction who has a prior or equal right to himself. By prior or equal right I mean any other next-of-kin who in blood relationship to the deceased is nearer than, or as near as, the applicant himself;

(b) If the applicant is not himself a next-of-kin, then on account of the matters which the Court must take into consideration, e.g. consanguinity of the applicant before granting letters of administration under section 54 of the Enactment, the applicant should also name in his petition any other next-of-kin of full age and within the jurisdiction.

All the persons mentioned in (a) and (b) must be served with notice of the application.

In this case, Letchumanan Chettiar is of full age and was resident within the jurisdiction at the time of the petitioner's application. As a brother and a next-of-kin of the deceased he had a prior right to the petitioner who is merely a brother of the deceased's wife and therefore not even a next-of-kin of the deceased. Accordingly he should have been named by the petitioner in his application and should also have been served with notice of it. On these grounds the objector must succeed in this application.

The order of the 15th day of November, 1946, granting letters of administration to S. A. Andiappa Chettiar is set aside and the objector, A. R. S. Ramananthan Chettiar, is awarded the costs of this application.

I might add that in my view this judgment discloses that the law as to the persons who should be named in a petition for letters of administration and who should be served with notice of it appears to be unnecessarily complicated. At an opportune time consideration might be given to the advisability of enacting a simple Rule that a petitioner for letters of administration should only be required to name in his petition those persons who have a prior or equal right and the ground on which he claims a grant in priority to each of such persons. I also suggest that the Rule should provide that he should only be required to serve with notice of the petition those of such persons who are of full age and resident within the jurisdiction.

Order Accordingly.